

UNITED STATES DISTRICT COURT

for the

Northern District of New York

UNITED STATES OF AMERICA

v.

BRIAN BUSCHYNSKI,

Case No.

1:19-mj-854 (CFH)

Defendant.

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. On or about the date(s) of between March 2019 and December 11, 2019 in the county of Washington in the Northern District of New York the defendant violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 2251	Sexual exploitation of a child
18 U.S.C. § 2252A	Possession of child pornography

This criminal complaint is based on these facts:
See attached affidavit

☒ Continued on the attached sheet.



Complainant's signature

TFO Christopher R. Smith, FBI

Printed name and title

Sworn to before me and signed in my presence.

Date: December 20, 2019

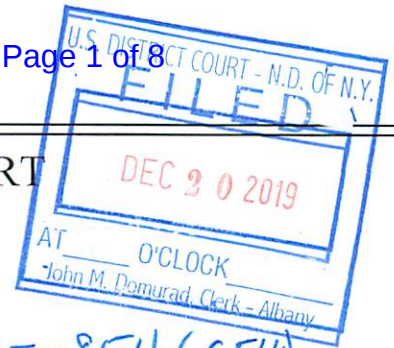


Judge's signature

City and State: Albany, New York

Hon. Christian F. Hummel, U.S. Magistrate Judge

Printed name and title



AFFIDAVIT IN SUPPORT OF
CRIMINAL COMPLAINT

I, Christopher R. Smith, a Task Force Officer with the Federal Bureau of Investigation, being duly sworn, depose and state as follows:

Introduction

1. I am a Task Force Officer of the United States Department of Justice, Federal Bureau of Investigation (“FBI”), and I am empowered by law to investigate and make arrests for offenses enumerated in Title 18, United States Code, Section 2516. As such, I am an “investigative or law enforcement officer” within the meaning of Title 18, United States Code, Section 2510(7).

2. I have been employed as a Task Force Officer with the FBI since 2012 and am currently assigned to the Albany Division, Albany, NY. While employed by the FBI, I have investigated federal criminal violations related to cybercrime, child exploitation, and child pornography. I have gained experience through training by the FBI and everyday work relating to conducting these types of investigations. I have participated in the execution of several federal search warrants in child sexual exploitation investigations.

3. This affidavit is made in support of a criminal complaint charging Brian BUSCHYNSKI violating Title 18, United States Code, Section 2251, sexual exploitation of a child, and Title 18, United States Code, Section 2252A, possession of child pornography.

4. The statements in this affidavit are based in part on information developed by your affiant and on my investigation of this matter, including the results of a search warrant executed on December 5, 2019, as well as information provided to me by other law enforcement officials. I have set forth only those facts that I believe are necessary to establish probable cause to believe

that BUSCHYNSKI has committed violations of Title 18, United States Code, Sections 2251 and 2252A.

Probable Cause

5. On or about November 27, 2019 while aboard the Allure of the Seas, a cruise ship operated by Royal Caribbean International and being transit to the Port of San Juan, VICTIM 1, a 7-year-old female and A.R., the mother of VICTIM 1, attended the showing of a movie at an outdoor theater. During the movie, VICTIM 1 and A.R. left their seats and went to the bar area to get a drink. A.R. sent VICTIM 1 back to her seat while A.R. waited for her drink order to be filled. When A.R. returned to her seat, she observed an adult male, later identified as BUSCHYNSKI, seated to VICTIM 1's right hand side. When the movie ended, A.R. left the theater with VICTIM 1. While exiting the theater, VICTIM 1 disclosed to A.R. that VICTIM 1 was touched in a sexual nature by BUSCHYNSKI.

6. On or about November 28, 2019, Agents from the FBI San Juan Division interviewed A.R. who advised that on the previous night she attended a movie with VICTIM 1. A.R. advised that she and VICTIM 1 left their seats about hour into the movie because VICTIM 1 requested to get a drink. A.R. placed an order for drinks and sent VICTIM 1 back to her seat with a drink while A.R. waited for her drink order to be filled. When A.R. returned to her seat, approximately five to six minutes later, she observed VICTIM 1 seated next to BUSCHYNSKI. A.R. asked BUSCHYNSKI if she and VICTIM 1 had taken the seats of BUSCHYNSKI's family to which BUSCHYNSKI replied "no" and that his family had left the movie.

7. A.R. advised that while she was leaving the theater with VICTIM 1, VICTIM 1 asked A.R. to ask BUSCHYNSKI not to touch her like that again because VICTIM 1 did not like it. After hearing this statement from VICTIM 1, A.R. contacted the nearest cruise line employee

to report the incident. VICTIM 1 further stated to A.R. that BUSCHYNSKI touched and rubbed her thigh and touched and inserted a finger into VICTIM 1's vagina. A.R. advised that while VICTIM 1 described how BUSCHYNSKI had touched her, VICTIM 1 also replicated the motion used by BUSCHYNSKI to touch her vagina.

8. Also on or about November 28, 2019, Agents from the FBI San Juan Division interviewed VICTIM 1. VICTIM 1 stated that when she returned to the theater she sat down in her seat and BUSCHYNSKI sat next to her. VICTIM 1 described that BUSCHYNSKI touch and rubbed her thigh and moved his hand inside of her clothes and touched her vagina. When describing how she was touched by BUSCHYNSKI, VICTIM 1 stated that his finger was “deep in me.” VICTIM 1 stated that she did not speak with BUSCHYNSKI and he did not speak with her.

9. On or about November 28, 2019, Agents of the FBI San Juan Division conducted an interview with BUSCHYNSKI aboard the Allure of the Seas cruise ship. BUSCHYNSKI was advised of his *Miranda* rights, which he voluntarily waived and agreed to speak with Agents. BUSCHYNSKI admitted to touching and rubbing VICTIM 1's thigh on two occasions for approximately 30 seconds each time while seated next to VICTIM 1 during the movie. BUSCHYNSKI advised that he touched VICTIM 1 because VICTIM 1 looked at him and it was a scary part of the movie and he was attempting to console her. BUSCHYNSKI denied touching VICTIM 1's vagina. Since then, agents have confirmed that the movie shown on the cruise was Toy Story.

10. On November 29, 2019 a federal criminal complaint was authorized by United States Magistrate Judge for the United States District Court for the District of Puerto Rico charging BUSCHYNSKI with a violation of Title 18, United States Code, Title 18, USC 2244(a)(2) and (c).

That same date, BUSCHYNSKI surrendered himself to FBI San Juan. During processing, BUSCHYNSKI consented to a search of his Apple iPhone SE cellphone (“iPhone”), which agents subsequently seized.

11. On December 3, 2019, pursuant to consent provided by BUSCHYNSKI, FBI San Juan Special Agent (SA) Thadeaus J. Caldwell forensically examined the contents of his iPhone. During the course of the examination, SA Caldwell observed approximately seven images located in the “recently deleted gallery” that depict VICTIM 2, a girl approximately 7 years old who was later identified and interviewed. The images all appear to have been taken in the kitchen of a residence. In several of the images VICTIM 2 is completely naked and in at least four more images she is wearing only underwear and naked from the waist up. These photographic images appear to have been created on approximately March 22, 2019 and deleted on November 28, 2019¹ one day prior to BUSCHYNSKI’s surrender to FBI San Juan.

12. I have reviewed the images located on BUSCHYNSKI’s iPhone. The following are descriptions of two of the aforementioned images, which are available for the Court’s review:

- a. An image file depicting a completely naked minor female approximately seven years old captured from behind, standing in what appears to be a residential kitchen, bent over with her naked anus and vagina visible in the image.
- b. An image file depicting a completely naked minor female, approximately seven years old, captured from behind with her knees bent exposing her anus in a lewd and lascivious manner, standing in what appears to be a residential kitchen with dark hardwood floors.

¹ Images deleted from an Apple iPhone are still present on the device within the recently deleted photo gallery and have the ability to be un-deleted by the user within 30 days following the day of deletion. The remaining number of days until final deletion is usually identified with the image.

13. EXIF data from the images shows that both images were taken on March 22, 2019 and includes location information showing that these two images were taken in the location of 83 to 98 [REDACTED] in Fort Edward, which is where BUSCHYNSKI's residence is located.

14. On December 5, 2019, the Honorable Christian F. Hummel, U.S. Magistrate Judge for the Northern District of New York, issued a search warrant for BUSCHYNSKI's residence located at [REDACTED] in Fort Edward, New York and any computers, computer equipment and/or any other electronic media within the residence.

15. That evening, members of the FBI Child Exploitation and Human Trafficking Task Force went to BUSCHYNSKI's residence to execute the warrant. During the execution of the warrant a Western Digital hard drive, a size commonly found in a laptop, bearing serial number WD-WXEY07Q61403 was located within a drawer of a desk in an office area of the residence. This office area and the desk within it is the same location BUSCHYNSKI previously brought a Fort Edward Police officer to play surveillance video captured from his residence on a computer BUSCHYNSKI referred to as his computer.² Also located during the execution of the search were pieces of paper with several usernames and passwords hand written on them. These username and password combinations listed on the papers appeared to be associated with online accounts, some of which included the name Brian BUSCHYNSKI or the name David.³

16. Beginning on December 11, 2019, the aforementioned Western Digital hard drive recovered from BUSCHYNSKI's residence was forensically copied and that copy was forensically

² As part of this investigation, I contacted the Fort Edward Police Department. According to the Fort Edward Police Department, officers responded to BUSCHYNSKI's residence on October 21, 2019 after he reported a larceny there. BUSCHYNSKI spoke with the responding officer and invited the officer into an office that contained at least two laptop computers and a desktop computer. BUSCHYNSKI told the responding officer that the computers belonged to him.

³ BUSCHYNSKI's middle initial is D.

examined using forensic software available to law enforcement. The hard drive was manufactured outside the state of New York.

17. Multiple images were located during the forensic examination of the hard drive and reviewed by your affiant. Below are descriptions of some images that depicted minors engaged in sexually explicit conduct:

- a. Illegal preteen (incest kiddy rape).jpg: An image file depicting a prepubescent female approximately nine to ten years old. The female has her genitals exposed and an adult male is engaged in vaginal intercourse with her.
- b. Img20030331101215.jpg: An image file depicting a female approximately two to three years old. The female's legs are spread and an adult male has his penis on her vagina.
- c. Photo by carl pedo 12yo with 16yo boy light copy.jpg: An image file depicting a prepubescent female approximately ten to twelve years old lying on her back naked with her legs spread. The female has her hand on an erect penis of a prepubescent male while an adult has a finger inserted into her vagina.
- d. 11-yr-emily2.jpg: An image file depicting a prepubescent female approximately ten to twelve years old. The female is naked with her legs spread exposing her genitals and is the focus of the image.
- e. 2_pthc ultra hard pedo pedofilia (new) 065.jpg: An image file depicting a prepubescent female approximately ten to eleven years old. The female is naked sitting on a bed and inserting a sexual device into her vagina.

18. All file paths for the aforementioned files were as follows: DE1B3.E01/Partition 3/OS [NTFS]/[orphan]/Users/Brian/Documents/zcpv/pic/FILE NAME.

19. On December 11, 2019, a forensic interview was conducted with VICTIM 2 whose date of birth is (xx/xx/2012). During the interview, VICTIM 2 stated that Brian BUSCHYNSKI had taken a video or picture of her while she was naked and that it was embarrassing. VICTIM 2 stated that BUSCHYNSKI took the pictures in the kitchen area of his residence.

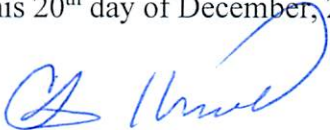
CONCLUSION

20. Based on the foregoing, there is probable cause to conclude that Brian BUSCHYNSKI has violated Title 18, United States Code, Sections 2251 and 2252A.



Christopher R. Smith
Task Force Officer
Federal Bureau of Investigation

Sworn and subscribed before me
this 20th day of December, 2019.



Hon. Christian F. Hummel
UNITED STATES MAGISTRATE JUDGE